IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 922 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RAVAL RAMA JAMA

Appearance:

1. Criminal Appeal No. 922 of 1986

MR AJ DESAI APP for Petitioner No. 1

MR HARSHAD J SHAH for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-State of Gujarat has filed this appeal against the impugned judgment and order of acquittal dated 7.5.1986 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in sessions Case No.61 of 1985 whereby the learned Judge acquitted respondents-accused for the offence u/S.302 r/w. Sec.34 of the IPC for which they were charged.

#. It is the case of the prosecution that the complainant-Mafabhai Magabhai had lodged the complaint before the police on 14.3.1985 about the incident in question, which took place on the same day i.e. on 14.3.1995 at 12.00 noon. It is the case of the prosecution that all the three respondents-accused; (1) Raval Rama Jama (2) Raval Prahlad Rama and (3) Raval Kanu Rama armed with deadly weapons like farsis, dharias, sticks etc. and mercilessly attacked his father Magabhai at 12.00 noon. He was removed in an injured condition to the hospital where he succumbed to his injuries in the evening at 7.45 p.m. The respondent-accused No.1-Raval Rama Jama and accused No.2-Raval Prahlad Rama were arrested on the next date of incident i.e. 15.3.1985 and the respondent-accused No.3-Raval Kanu Rama was arrested on 19.3.1985. After completing the investigation, police filed charge sheet against the accused u/S.302 r/w. Sec.34 of the IPC before the learned Magistrate, who in turn committed the same to the court of Sessions. The learned Trial Judge after appreciating the evidence of the prosecution witnesses and defence of the accused came to the conclusion that the prosecution has failed to prove case against respondents-accused beyond reasonable doubt, therefore, by giving benefit of doubt acquitted the respondents-accused. This judgment and order dated 7.5.1986 is challenged in this appeal.

#. Learned APP, Mr.Desai has taken us through the relevant portion of the prosecution witnesses as well as the reasons assigned by the learned Judge for acquitting respondents-accused, more particularly, para 10 of impugned judgment. From the reasons of acquittal assigned by the learned Judge, it is clear that there was only eye witness Vejiben, daughter of the deceased Magabhai, PW-4 Ex.16. Apart from the fact that there is discrepancy in her evidence about the place of incident, there are other discrepancies about the injuries received by the deceased during the incident. As per the medical evidence of doctor, there were in all four injuries on the person of the deceased, whereas, according to

witness-Vejiben several blows were given on the body of the deceased by all the three accused. That apart the learned Judge, who had an opportunity to see the accused person before him noticed that respondent-accused No.1-Raval Rana Jama was crippled and walking only with help of crutches. In spite of this, witness-Vejiben stated that accused No.1-Raval Rama Jama came running and gave blows after blows to deceased Magabhai. Thereafter, other accused gave blows with the weapons in their hands. In her cross-examination, she has admitted that she came to the place of the incident from her village after the incident was over. In that view of the matter, it is extremely difficult to rely upon the testimony of such witness. The learned Judge, therefore, was fully justified in holding that she was a chance witness and her evidence cannot be relied upon. Apart from that there was a material discrepancy in the evidence of this witness-Vejiben with the evidence of her brother-Mafabhai Magabhai, the complainant. When the learned Judge has given cogent reasons for not believing the eye witnesses and other witnesses examined by the prosecution, then merely because other view is possible that itself would not be a ground to interfere with such order of acquittal in this appeal and that too after a period of almost two decades of the incident. In the instant case, all the panchas have not supported the prosecution case about the recovery of the weapons at the instance of the accused. All the facts taken into consideration would go to show that the prosecution failed to prove its case against the accused beyond reasonable doubt.

In view of the above discussion, we do not find any substance and merits in this appeal. According it fails and the same is hereby dismissed. Bail bonds of the respondents-accused stand cancelled.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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